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The Relation between Concerning Work Creation with Licensing Organization by Local Governments (Law Number 11 of 2020)

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The condition of hyper regulation in Indonesia causes a lot of overlapping norms regulated in various laws and regulations. To overcome these problems, the idea to emerged this issue become several omnibus laws, including the Draft Law on Job Creation, which was promulgated as Law Number 11 of 2020 concerning Job Creation on November 2, 2020. Drafting of Law Number 11 of 2020 concerning Job Creation with the omnibus law method raises several problems, including whether the use of the Omnibus Law technique in Law Number 11 of 2020 concerning Job Creation is in accordance with the technique of establishing laws and regulations as stipulated in Law Number 12 of 2011 concerning the Establishment Laws and regulations? Can the central government withdraw the authority of local governments in administering permits in the regions through Law Number 11 of 2020 concerning Job Creation The purpose of this study is to determine whether or not the use of the Omnibus Law technique in Law Number 11 of 2020 concerning Job Creation. It is contrary to the technique of establishing legislation in Law Number 12 of 2011 concerning the Establishment of Legislation. It also to find out whether or not the central government withdraws the authority of local governments in administering licensing in the regions through Law Number 11 of 2020 concerning Job Creation. The research method used in this study is normative juridical research, using a statutory approach and a conceptual approach. The conclusion of this study is that the omnibus law technique in the preparation of Law Number 11 of 2020 concerning Job Creation is contrary to the technique of drafting laws and regulations in Law Number 12 of 2011 concerning the Establishment of Legislation. Thus, in the future it is necessary to change the Act. -The law is to accommodate the method of law formation with the omnibus law method as a reference in the preparation of the draft law using the next omnibus method. The central government can withdraw the authority of local governments in administering permits that are sourced from the attribution authority in several laws, by making changes to the relevant laws that provide such authority.

Keywords: Authority, Law Number 11 of 2020 concerning Job Creation, Omnibus Law.

1. INTRODUCTION

The State of law in Indonesia have regulation in Article 1 paragraph (3) of the 1945 related Constitution of the Republic of Indonesia. As a legal state that adheres to the flow of positivism or also known as the flow of positive law, bringing legal consequences in Indonesia must be written [1]. The legal requirements in Indonesia in written form are in line with the definition of laws and regulations in Law Number 12 of 2011 concerning the Establishment of Legislations. As a result, since Indonesia's independence until now, both -

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government wither central or local, has issued various laws and regulations to regulate the lives of its citizens [2]. At the time the Job Creation Bill was discussed in the DP. The number of laws and regulations that had been issued were 8,440 (eight thousand four hundred forty) Central Regulations, 14,724 (fourteen thousand seven hundred twenty-four) Ministerial Regulations, 4,273 (four thousand two hundred seventy three) Non-Ministerial Government Institution Regulations, and 15,965 (fifteen thousand nine hundred sixty five) Regional Regulations [3]. However, the number of laws and regulations is not an indicator to show the government's succes in

regulating the lives of its citizens. Thus, the quality of legislation in Indonesia can also be seen from Indonesia's score from 1996 to 2017 according to the Regulatory Quality Index issued by the World Bank [4]. In the Regulatory Quality Index, Indonesia obtained an index of -0.11 (minus zero point eleven) and was ranked 92 (ninety seconds) out of 193 (one hundred and ninety three) countries. It condition has certainly been realized by the government, since October 2017 President Joko Widodo has complained about the many regulations in Indonesia [5]. The complaint was submitted in various events, both by the president himself and related officials, including from the Ministry of Law and Human Rights. In the Training of Candidates for Functional Officials in Drafting Legislations in 2018, the Director General of Legislation at the Ministry of Law and Human Rights Prof. Dr. Widodo Ekatjahjana, S.H., M.Hum. delivered legal politics material, which among others conveyed substantive issues in the formation of regulations, namely the current state of obesity regulation (hyper regulation) and downsizing policy plans [6]. Regulatory obesity occurs because of the many types of laws and regulations that are arranged hierarchically as stipulated in Article 7 paragraph (1) and Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation. All of these laws and regulations refer to Pancasila as the source of all sources of law in Indonesia [7]. In addition to regulations in the form of laws and regulations, there are also regulations that are not promulgated, including circulars, internal regulations, and joint decisions.

Job creation is related to various aspects of people's lives. Law Number 11 of 2020 concerning Job Creation is motivated by the overlapping of laws and regulations governing business licensing, including Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services or better known as Online Single Submission. (OSS). Through a Government Regulation which is motivated by the government's efforts to encourage ease of doing business, the government has reduced the number of permits from 537 (five hundred and thirty-seven) to 237 (two hundred and thirty-seven). It also reduced from 362 (three hundred and sixty-two) non-licensed. license to become 215 (two hundred and fifteen) non-licensed [8]. However, Government Regulation Number 24 of 2018 consits to improve the performance of investment realization is faced with a normative problem, including the occurrence of a clash of norms with various licensing norms regulated in various laws. Such regulations result in the investment climate in Indonesia becoming ineffective due to not providing legal certainty [9].

In order to overcome these problems, one of strategies which do by goverment is encourage economic growth through increased investment by reforming the

regulations in the field of business licensing [10]. The reforms which aimed for resolving investment barriers, including the length of the bureaucratic chain, overlapping regulations, and many regulations that are not harmonious, especially in central and regional regulations (hyper-regulation). Therefore, it is necessary to deregulate the provisions regarding business licensing, investment requirements, employment, Micro, Small and Medium Enterprises (UMK-M) including cooperatives, land acquisition, development of economic zones, implementation of government projects, as well as provisions regarding government administration and the imposition of criminal sanctions. regulated in various laws [11]. Given the large number of regulations governing business licensing, investment requirements, employment, Micro, Small and Medium Enterprises (UMK-M) including cooperatives, land acquisition, development of economic zones, implementation of government projects, as well as provisions regarding government administration, it will be difficult to deregulate normally by changing the laws that govern it one by one. Therefore, the government has taken the initiative to apply the Omnibus Law method by forming 1 (one) thematic law that changes various provisions regulated in various other laws [12].

At the time of its preparation and discussion, the idea of applying the Omnibus Law method in Law Number 11 of 2020 concerning Job Creation, which has been ratified as Law Number 11 of 2020 concerning Job Creation and promulgated on November 2, 2020, reaped several pros and cons. Among the opinions that disagreed with the concept came from the Monitoring Committee for Regional Autonomy and Mardani Ali Sera, Deputy Chairperson of the Secretary General (Wasekjen) of the Prosperous Justice Party (PKS) DPP [13]. The Monitoring Committee for the Implementation of Regional Autonomy (KPPOD) highlighted the issue of the Government Administration cluster in the Draft Job Creation Law (RUU Ciptaker) which is currently being discussed in the DPR. KPPOD Executive Director Robert Endi Jaweng assessed that if the Ciptaker Bill was passed, it would potentially erode the authority of local governments and have a negative impact on service processes in the regions [14]. Robert also argues that, there is also a narrowing of the nature and mechanism from what it should be, namely the granting of authority to just a delegation of affairs/tasks (delegation), whereas the constitution stipulates the position and authority of the regions in regulating and managing the administration of their own government according to the principle of autonomy and co-administration. Robert assessed that the arrangement of authority also had an impact on the existence of the autonomous region as an independent legal entity in the administration of government. According to him,

autonomous regions have been reduced to only regional governments (Pemda), government agencies or officials who carry out the delegated authority of the President [15]. A centralized power in the context of democracy is very contrary to the spirit of reform. A big country like Indonesia requires the role of the regions through a centralized approach that requires bottom-up policies, not the other way around as stated in the Omnibus Law Bill [16]. Furthermore, the potential loss of regional autonomy can be seen in articles 162, 163, 164, and 166 of the Omnibus Law Bill which places all regional heads under the command of the Central Government, as well as the opportunity to violate article 18 paragraph (2) and paragraph (5) The 1945 Constitution which emphasizes the implementation of regional autonomy as widely as possible, except for the absolute affairs of the Central Government which are regulated by law [16, 17]. The technique of preparing the Draft Law on Job Creation has also received criticism from several parties, including from LBH Jakarta. LBH Jakarta assesses that this omnibus law has no basis (legal basis). LBH assesses that Law No. 12 of 2011 concerning the Establishment of Legislation as updated by Law No. 15 of 2019 does not regulate the omnibus law mechanism. Therefore, the drafting of the omnibus law bill should comply with the principles of establishing laws and regulations. Otherwise, it could potentially cause new problems.

2. METHODOLOGY

A. Types of research

In this study, the author uses a normative juridical research method approach, which is carried out by examining library materials or secondary data. Normative juridical research is also known as library law research.

According to Soerjono Soekanto, normative legal research or literature includes:

- a. Research on legal principles;
- b. Research on legal systems;
- c. Research on the level of vertical and horizontal synchronization;
- d. Legal comparison;
- e. Legal history.

B. Data source

In normative juridical research, the data used are secondary data. Legal literature from the point of view of binding strength can be divided into three groups. This includes primary, secondary, and tertiary legal materials. Primary legal materials are legal data covering sources/national laws relating to regional autonomy and the formation of laws and regulations, which consist of several laws and regulations, including:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Law Number 23 of 2014 concerning Regional Autonomy;

- c. Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations; and
- d. Law Number 11 of 2020 concerning Cpta Employment.

Secondary legal materials, namely data obtained from various sources in the form of reference books and research results related to research materials. Secondary legal materials are materials that are closely related to primary legal materials and can help analyze primary legal materials, such as literature related to regional autonomy and the formation of laws and regulations, as well as scientific works of experts [18]. Tertiary legal materials are materials that provide information on primary and secondary legal materials, including dictionaries, encyclopedias, magazine articles, newspapers, and internet articles.

C. Method of collecting data

The data collection technique used in this legal research is a data collection technique in the form of library research. Literature study is research to obtain secondary data obtained by reviewing and exploring library sources, such as literature, research results, as well as studying written materials related to the problems to be discussed, scientific books, newspapers, laws and regulations. - invitation.

D. Data analysis

The data analysis method used in this study is a qualitative method. Qualitative research is research whose data analysis uses a qualitative approach that uses data in research in the form of verbal words and not in the form of numbers. Qualitative research is research that produces analytical procedures that do not use statistical analysis procedures or other quantification methods [19]. The definition of qualitative research according to Syaodih Sukmadinata is a research aimed at describing and analyzing phenomena, events, social activities, attitudes, beliefs, perceptions, thoughts of people individually and in groups. Through the qualitative data analysis method, the author will analyze the laws and regulations and other literature sources, so that they can answer the problems of this research. In this study, the data observation taken from laws and regulations and library research which are then compiled and described in a quality manner in the form of sentences that are orderly, systematic, logical, non-overlapping, and effective, thus facilitating data interpretation and understanding of the results of the analysis [20]. The data is then analyzed interpretively using theory and positive law that has been poured then inductively drawn conclusions.

3. RESULTS AND DISCUSSION

A. Background, Objectives, and Scope of Formation of Law Number 11 of 2020 concerning Job Creation

The background for the formation of Law Number 11 of 2020 concerning Job Creation can be found in the Academic Paper of the Draft Law on Job Creation, as well as in the considerations and general explanations of Law Number 11 of 2020 concerning Job Creation itself. Law Number 11 of 2020 concerning Job Creation was established to realize the ideals/objectives of the establishment of the Republic of Indonesia in the second paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely to create a prosperous, just, prosperous, equitable, good society. material and spiritual. In line with this goal, Article 27 paragraph (2) of the 1945 Constitution stipulates that "Every citizen has the right to work and a decent living for humanity. Therefore, the government needs to make various efforts or actions to fulfill the rights of citizen's right. To obtain a decent job and a decent living Fulfillment of the right to a decent job and a decent living is in principle one of the important aspects of national development which is carried out in the context of developing Indonesian people as a whole. The purpose of the establishment of Law Number 11 of 2020 concerning Job Creation can be found in the provisions of Article 3 of the law, namely:

- a. Create and increase job opportunities by providing convenience, protection, and empowerment to cooperatives and MSEs as well as national industry and trade as an effort to be able to absorb Indonesian workers as widely as possible while taking into account the balance and progress between regions within the national economic unity;
- b. Ensure that every citizen gets a job, and gets fair and proper remuneration and treatment in an employment relationship;
- c. Adjusts adjustments to various aspects of regulation relating to alignments, strengthening, and protection for cooperatives and MSEs and national industry; and
- d. Makes adjustments to various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to national interests based on national science and technology guided by the ideology of Pancasila.

The scope of Law Number 11 of 2020 concerning Job Creation as regulated in Article 4 of the law, includes:

- a. Improvement of the investment ecosystem and business activities.
- b. Employment.

- c. Convenience, protection, and empowerment of cooperatives and micro, small and medium enterprises;
- d. Ease of doing business.
- e. Research and innovation support.
- f. Land acquisition.
- g. Economic area
- h. Central government investment and acceleration of national strategic projects.
- i. Implementation of government administration to support job creation; and
- j. Imposition of sanctions.

B. Legal Certainty in the Use of the Omnibus Law Method in the Legislation in Indonesia

The technique of drafting laws and regulations is a method based on special expertise so that the method of arranging written regulations formed by government institutions or authorized officials and binding in general, is arranged regularly, systematically and coherently in accordance with the provisions of laws and regulations. In Appendix II of Law Number 12 of 2011 concerning the Establishment of Legislation in Chapter I letter A number 6, it is stated that in the name of the amended legislation, the phrase "change" is added in front of the title of the amended legislation. In number 7 it is stated that if the legislation has been amended more than 1 (one) time, between the word change and the word above is inserted a statement indicating how many times the change was made without detailing the previous changes. In Appendix II of Law Number 12 of 2011 concerning the Establishment of Legislation in Chapter I letter D number 230 to number 238, it is regulated on the technique of changing laws and regulations. In these provisions, it is regulated that changes to laws and regulations are carried out by inserting or adding material to the legislation or by deleting or replacing part of the material in the legislation. The format in the body of the amended statutory regulations consists of two articles, namely Article I which contains the title of the amended statutory regulation, by mentioning the State Gazette of the Republic of Indonesia and the Supplement to the State Gazette of the Republic of Indonesia which is placed between brackets, and contains material or changed norms. If the change material is more than one, then each change material is detailed using Arabic numerals (1,2,3, and so on). As for Article II of the amended statutory regulations, it contains provisions regarding when it comes into force. In certain cases, Article II may also contain transitional provisions from the amended statutory regulations, the meaning of which is different from the transitional provisions of the amended statutory regulations.

C. The Authority for Implementing Licensing After the Enforcement of Law Number 11 of 2020 concerning Job Creation

Since the implementation of electronically integrated business licensing (online single submission) or commonly referred to as OSS as regulated in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing which seeks to resolve the overlapping issue of business licensing in Indonesia, the nomenclature and requirements for business licensing have been experiencing changes. The difference can be found from the requirements for the issuance of business licenses, which originally had to be accompanied by a company registration certificate (TDP), principal approval, trading business license (SIUP), location permit, environmental permit, and building permit, which were changed by changing the TDP requirements with number holding company (NIB) obtained through the registration mechanism through the OSS system. Similar for the application of SIUP as long as the business actor runs his business, without the need for re-registration of SIUP every 5 (five) years at the place of issuance of the SIUP. However, in its implementation, Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing contradicts many laws governing business licensing.

Environmental approval basically has not many changed much from before Law Number 11 of 2020 concerning Job Creation was enacted. Environmental permits are maintained, with changes to the nomenclature of environmental permits to become environmental approvals, but their objectives and functions are integrated into business permits. The obligation to have an environmental impact analysis still exists, but only for business activities with a high level of risk, which are carried out after the environmental approval is issued. As for some changes to the authority contained in the authority to grant dumping permits, which was originally the authority of local governments, became the authority of the central government with the nomenclature changed to dumping approvals. In addition, the authority of local governments (governors and regents/mayors) to force the person in charge of businesses and/or activities to carry out environmental restoration due to environmental pollution and/or destruction they do is withdrawn to the authority of the central government.

4. CONCLUSIONS

The Omnibus Law technique in Law Number 11 of 2020 concerning Job Creation is not regulated and contradicts the technique of drafting laws and regulations as regulated in Law Number 12 of 2011 concerning the Establishment of Legislation. The central government can withdraw the authority of the regional government in administering licensing in the regions, because the

authority of the regional government in administering permits comes from the attribution authority contained in several laws. Thus, the authority of the regional government can be withdrawn/transferred to the central government by making changes to the law. relevant laws that provide such authority.

It is necessary to amend Law Number 12 of 2011 concerning the Establishment of Legislations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations to accommodate the method of law formation the law with the omnibus law method as well as certain conditions that can be the basis for consideration for the government to use the omnibus law method, which can be used as a reference in the preparation of the draft law with the next omnibus law method. Thus, the local governments immediately take an inventory of changes in licensing authority and authorities related to the implementation of permits that have changed after the enactment of Law Number 11 of 2020 concerning Job Creation and presidential regulations as well as implementing government regulations, so that later changes in authority can be implemented immediately and do not interfere with the investment process. in the area.

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